By:  Middleton, et al. S.B. No. 1217

(In the Senate - Filed February 27, 2023; March 9, 2023, read first time and referred to Committee on Business & Commerce; May 1, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 10, Nays 1; May 1, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                 X

Birdwell             X

Campbell             X

Creighton            X

Johnson              X

Kolkhorst            X

Menéndez             X

Middleton            X

Nichols                  X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR S.B. No. 1217 By:  Middleton

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Windstorm Insurance Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 2210.014, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d)  The association is not subject to any insurance premium tax or insurance maintenance fee or tax.

SECTION 2.  Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.016 to read as follows:

Sec. 2210.016.  LEGISLATIVE LOBBYING. (a) The association may not use any money under its control to attempt to influence the passage or defeat of a legislative measure.

(b)  An association employee or member of the board of directors who violates Subsection (a) is subject to:

(1)  immediate termination; and

(2)  a fine of $10,000 to be deposited in the catastrophe reserve trust fund.

(c)  This section does not prohibit an association employee or member of the board of directors from using money under the association's control to provide public information or to provide information responsive to a request for public information.

SECTION 3.  Subchapter B, Chapter 2210, Insurance Code, is amended by adding Section 2210.063 to read as follows:

Sec. 2210.063.  LOCATION OF ASSOCIATION HEADQUARTERS. The headquarters of the association must be located in a first tier coastal county or a second tier coastal county.

SECTION 4.  Section 2210.102, Insurance Code, is amended by amending Subsections (a), (c), (c-1), (d), and (g) and adding Subsection (d-1) to read as follows:

(a)  The board of directors is composed of eleven [~~nine~~] members appointed by the commissioner in accordance with this section.

(c)  Five [~~Three~~] members must, as of the date of the appointment, reside in the first tier coastal counties.  Each of the following regions must, to the extent possible, be represented by a member residing in the region and appointed under this subsection:

(1)  the region consisting of Cameron, Kenedy, Kleberg, and Willacy Counties;

(2)  the region consisting of Aransas, Calhoun, Nueces, Refugio, and San Patricio Counties; and

(3)  the region consisting of Brazoria, Chambers, Galveston, Jefferson, and Matagorda Counties and any part of Harris County designated as a catastrophe area under Section 2210.005.

(c-1)  Two [~~One~~] of the members appointed under Subsection (c) must be [~~a~~] property and casualty agents [~~agent~~] who are [~~is~~] licensed under this code and are [~~is~~] not [~~a~~] captive agents [~~agent~~].

(d)  Three members must reside in an area of this state that is located outside the first tier coastal counties [~~more than 100 miles from the Texas coastline~~].

(d-1)  One of the members appointed under Subsection (d) must be the public counsel of the office of public insurance counsel or the counsel's designee.

(g)  Members appointed to the board of directors under Subsections (c) and (d), other than a [~~the~~] member appointed under Subsection (c-1), must represent the general public in the regions described by those subsections.  A person may not be appointed to represent the general public under Subsection (c) or (d) if the person or the person's spouse:

(1)  is employed by or participates in the management of a business entity or other organization:

(A)  operating in the property and casualty insurance industry in this state;

(B)  receiving money from the association, other than insurance claim payments; or

(C)  receiving money from association policyholders with respect to the policyholders' claims;

(2)  owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization:

(A)  operating in the property and casualty insurance industry in this state;

(B)  receiving money from the association, other than insurance claim payments; or

(C)  receiving money from association policyholders with respect to the policyholders' claims; or

(3)  uses or receives a substantial amount of tangible goods, services, or money from the association, other than:

(A)  insurance claim payments; or

(B)  compensation or reimbursement authorized by law for the board members' membership, attendance, or expenses.

SECTION 5.  Section 2210.103(a), Insurance Code, is amended to read as follows:

(a)  Members of the board of directors serve three-year staggered terms, with the terms of three or four members expiring on the third Tuesday of March of each year.

SECTION 6.  Section 2210.105(d), Insurance Code, is amended to read as follows:

(d)  Except for an emergency meeting, a meeting of the board of directors shall be held at a location in a first tier coastal county or a second tier coastal county as determined by the board of directors.

SECTION 7.  Subchapter E, Chapter 2210, Insurance Code, is amended by adding Section 2210.211 to read as follows:

Sec. 2210.211.  LIMITATIONS ON CERTAIN ADJUSTMENTS. (a) The association may not automatically adjust the amount of coverage to be purchased by a policyholder.

(b)  The association may not require the use of any one replacement cost calculator.

(c)  The association may not adjust premiums, fees, or any other costs to policyholders for inflation without a vote by the board of directors.

SECTION 8.  Section 2210.352(a), Insurance Code, is amended to read as follows:

(a)  Not later than September [~~August~~] 15 of each year, the association shall file with the department a proposed manual rate for all types and classes of risks written by the association.

SECTION 9.  Subchapter J, Chapter 2210, Insurance Code, is amended by adding Section 2210.4531 to read as follows:

Sec. 2210.4531.  DETERMINATION OF PROBABLE MAXIMUM LOSS. (a) The association shall file with the department a proposed probable maximum loss, subject to Section 2210.453.

(b)  In determining the probable maximum loss, the association:

(1)  may not consider the cost of providing loss adjustments;

(2)  shall, to the extent possible, contract with any disinterested third parties necessary to execute any catastrophe models that were executed in the preceding storm season;

(3)  shall, if the association is unable to contract for the execution of a catastrophe model described by Subdivision (2), contract with any disinterested third party necessary to execute a catastrophe model that is substantially similar to the model for which the association is unable to contract under Subdivision (2);

(4)  may contract with any disinterested third parties to execute catastrophe models in addition to the models required under Subdivisions (2) and (3);

(5)  shall provide to a disinterested third party executing a catastrophe model any information necessary to comply with this subsection;

(6)  may not use a combination of catastrophe models to determine the probable maximum loss; and

(7)  may use only the catastrophe model that produces the lowest probable maximum loss.

(c)  The association shall make any information produced in compliance with Subsection (b) publicly available on the association's Internet website.

(d)  The association may only use a probable maximum loss that is approved by the commissioner. The commissioner may reject a probable maximum loss filed with the department by the association and set a probable maximum loss at any amount determined by the commissioner.

(e)  The amount of loss adjustment expense, as adopted by the board of directors for a catastrophe year and used for the association's rate indication for purposes of filing a rate under this chapter, must be considered above the probable maximum loss.

SECTION 10.  Section 2210.102(f), Insurance Code, is repealed.

SECTION 11.  Section 2210.063, Insurance Code, as added by this Act, applies to the Texas Windstorm Insurance Association beginning on January 1, 2025.

SECTION 12.  (a) The commissioner of insurance shall appoint two additional members to the board of directors of the Texas Windstorm Insurance Association as necessary under Sections 2210.102(c) and (c-1), Insurance Code, as amended by this Act, not later than December 1, 2023.

(b)  Notwithstanding Section 2210.103, Insurance Code, as amended by this Act, the initial term of one of the board members appointed under Subsection (a) of this section expires on the third Tuesday of March 2026, and the initial term of one of the board members appointed under Subsection (a) of this section expires on the third Tuesday of March 2027.

(c)  Notwithstanding Section 2210.102(d-1), Insurance Code, as added by this Act, a member of the board of directors serving under Section 2210.102(d), Insurance Code, is not required to be the public insurance counsel or the public insurance counsel's designee until the first vacancy under Section 2210.102(d) that occurs on or after the effective date of this Act.

SECTION 13.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

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